



INTERIOR BOARD OF INDIAN APPEALS

Estate of Rosa May Little Charley

40 IBIA 259 (02/28/2005)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF ROSA MAY : Order Affirming Decision
LITTLE CHARLEY :
: Docket No. IBIA 05-32
:
: February 28, 2005

On January 3, 2005, the Board of Indian Appeals (Board) received a notice of appeal forwarded by the Office of Hearings and Appeals in Oklahoma City, Oklahoma, from Carol Jean Mohawk, (Appellant), pro se, which was received by that office on December 22, 2004. The Board accepted her appeal as timely filed. See Estate of Nora Angeline Earth, 38 IBIA 225, 226 (2002).

Appellant sought review of an Order Docketing and Dismissing Petition for Rehearing entered in the Estate of Rosa May Little Charley, deceased Absentee-Shawnee Indian No. 820U004541, Probate No. SP-820-0050-04-1, by Administrative Law Judge Richard L. Reeh (ALJ) on November 4, 2004.

The order dismissing Appellant's petition for rehearing found that on August 19, 2004, a decision was issued in the Estate of Rosa May Little Charley. Any person aggrieved by the decision was required to file a petition for rehearing within sixty (60) days of the date on which notice of the decision was mailed to the interested parties. 43 C.F.R. § 4.241(a). The order also found that the request for rehearing submitted by Appellant was postmarked more than sixty days after issuance of the decision. The ALJ denied Appellant's Petition for Rehearing on the ground, inter alia, that it was untimely.

Because the ALJ's Order Denying Rehearing concluded that the petition for rehearing was not timely, Appellant was advised that the issue before the Board in this appeal was whether her petition for rehearing, found to have been postmarked on October 20, 2004, was timely filed. The Office of Hearings and Appeals in Oklahoma City sent a copy to the Board of Appellant's envelope in which her petition for rehearing was enclosed. The postmark on the envelope was October 20, 2004. Thus, the petition for rehearing appeared to have been postmarked two days after the close of the appeal period, namely, October 18, 2004.

Appellant in her appeal stated that she mailed the letter on October 18, 2004. However, because the postmark indicated otherwise, the Board ordered Appellant to show cause why the ALJ's order denying rehearing should not be summarily affirmed on the ground that her petition for rehearing was untimely. The Board also ordered the ALJ to submit to the Board, the original request for rehearing of the August 19, 2004, probate decision and the original envelope in which that request was enclosed.

On February 23, 2005, the Board received the original request for rehearing and the original envelope which enclosed the request. The envelope is clearly postmarked October 20, 2004, from Oklahoma City, Oklahoma.

On February 24, 2005, the Board received a letter from Appellant. In her letter, Appellant states that she mailed her request for rehearing on October 18, 2004, at "a Postal center located inside the Marriott [in Tulsa, Oklahoma]. This is where **I left the letter where they assured me it would be mailed**. This was October 18, 2004." (Emphasis supplied). Appellant added that she was perplexed that the place of mailing shown on the postmark was Oklahoma City instead of Tulsa.

Assurances to the contrary, Appellant's request for rehearing was apparently not mailed on October 18, 2004, by the Marriott postal center but, as the postmark clearly reveals, was, instead, mailed on October 20, 2004. Where the postmark is present and legible, the Board has construed the postmark date as the date of mailing. E.g., Estate of Alan Wayne Conners, 23 IBIA 199 (1993); GreyEyes v. Aberdeen Area Director, 22 IBIA 174 (1992). In addition, Appellant bears the responsibility for mailing her request for rehearing. That she entrusted the mailing of her submission to a third party is simply not material to the failure to timely file her request for rehearing.

The Board finds that the timeliness of the underlying petition for rehearing is dispositive of this appeal and, thus, affirms the ALJ's decision denying rehearing on that ground.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board affirms the November 4, 2004, decision of Administrative Law Judge Richard L. Reeh.

// original signed
Colette J. Winston
Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge